

### REMARKS

In response to the Office Action dated November 20, 2008, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 12-13 remain pending. Claim 12 has been amended. Claims 1-7 and 9-11 have been canceled, without prejudice or disclaimer. New Claims 14-25 have been added.

In the changes made by the current amendment, ~~deletions are shown by strikethrough~~ or enclosure in [[double brackets]], and additions are underlined.

#### **Rejection of Claims 1-7 and 9-11 Under 35 U.S.C. § 103**

Claims 1-7 and 9-11 presently stand rejected under Wang (US 5,425,723) in view of Tremulis (US 6,102,903) in further view of one or more additional references. Applicants maintain their position that the rejection is improper at least because the proposed modification of Wang would impermissibly change the Wang catheter's principle of operation. M.P.E.P. § 2143.01. For example, Applicants note that fluid introduced into the infusion section of the Wang catheter will begin to immediately exit the catheter via the proximal-most exit holes. This will result in a loss of fluid pressure in the more distal portions of the infusion section. Wang *compensates* for this loss of fluid pressure by increasing the number of exit holes in the more distal portion of the catheter's inner tube. In contrast, the present invention substantially *prevents* such a loss of downstream fluid pressure via the use of a porous member that *first* becomes saturated with fluid before dispensing fluid at a rate that is substantially uniform along its length. However, in an effort to expedite prosecution, Applicants have canceled Claims 1-7 and 9-11.

#### **Claims 12-25 Are in Condition for Allowance**

Claims 12-13 presently stand rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of Tremulis and in further view of Burns (US 5,032,113). Applicants respectfully disagree and traverse the rejection for the following reasons.

Applicants submit that the rejection of Claim 12 is improper at least for reasons similar to those described above in connection with Claim 1. Moreover, Claim 12 recites the limitation of

an “annular member disposed near the proximal end of said infusion section and configured to substantially prevent fluid introduced within said tube from entering said infusion section without first passing through said elongated member.” The cited references at least do not disclose or render obvious this limitation. The Office Action cites “wall insert 40” of Burns as meeting the limitation of an “annular member” having the claimed properties. As discussed during the Interview, Burns discloses an over-the-wire balloon catheter for use in angioplasty procedures. The catheter of Burns has a single lumen proximal portion and a multi-lumen distal portion. The “wall insert 40” is provided to establish a fluid connection between the proximal and distal portions. Col. 6, ll. 11-16. Accordingly, wall insert 40 includes openings or channels 48 which provide a fluid path for the inflation medium. Col. 6, ll. 27-30 and FIGS. 4A-4B. Additionally, Applicants submit that it would not have been obvious to modify Wang to include an annular member having the claimed properties. Accordingly, Applicants submit that Claim 12 is allowable. Claim 13 is allowable, not only because it depends from allowable Claim 12, but upon its own merit as well.

Applicants also submit that new Claims 14-25 are allowable, not only because they depend from allowable Claim 12, but upon their own merit as well.

*No Disclaimers or Disavowals*

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

**Application No.:** 10/828,923  
**Filing Date:** April 21, 2004

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Curtiss Dosier at (949) 721-7613 (direct line), to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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